

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 3030/2003

NEW THIS 13th DAY OF May 2005

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

S R Korada
S/o Shri Korada Paidithalli
R/o 390-A, Chirag Delhi, New Delhi-110017.

.....Applicant

(By Advocate: Shri Kumar Parimal)

VERSUS

1. Union of India
Through the Secretary
Department of Personnel & Training, Shastri Bhawan, New Delhi
2. The Secretary,
Department of Scientific & Industrial Research,
Anusandhan Bhawan, CSIR Building, Rafi Marg, New Delhi – 110001
3. Shri Jagdish Singh, Scientist 'G'
Department of Scientific & Industrial Research,
Technology Bhawan, New Mehrauli Road, New Delhi – 110016
4. Shri R R Abhyankar, Scientist 'G'
Department of Scientific & Industrial Research,
Technology Bhawan, New Mehrauli Road, New Delhi – 110016.

.....Respondents

(By Advocate: Sh. N S Mehta)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant is a Scientist with the Department of Scientific & Industrial Research and is aggrieved by not being promoted to the grade of Scientist 'D'. The applicant has prayed for quashing of Annual Confidential Reports for the period 1999-2003 and directions to the respondents to consider the case of the applicant for promotion to the grade of Scientist 'D' without taking into account the aforesaid ACRs, if selected in interview.

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2. The main ground of the applicant for seeking the relief is that the applicant though eligible for consideration for promotion under the '**Flexible Complementing Scheme**' (**FCS**) after four year in the grade, on the basis of Annual Confidential Reports (ACR) he has been denied promotion because the respondents did not hold interviews for about 1 1/2 years. On account of this delay the applicant could not get the opportunity to face selection committee, resulting in great injustice resulting in Dr (Mrs) Sujata and Dr. P K Dutta becoming senior. The respondents have delayed holding of selection so that Scientists of their choice could supersede him in the screening test.

3. The applicant has pleaded that the ACRs for the period 1999 to 2003 have been written and assessed in one go by the respondents on account of which the applicant was '**screened out**' and was not '**screened in**' for promotion to the grade of Scientist 'D' under FCS. This procedure was clearly illegal, unfair and unjust and was obviously pernicious and pregnant with prejudices and manipulation violating the principles of natural justice. The respondents had a duty to proceed in a way that is free from even appearance of arbitrariness, unreasonableness or unfairness. He relied upon the judgments of the apex court in the case of **E.P. Royappa Vs. State of Tamil Nadu (1974) 4 SCC 3** and in the case of **Menaka Gandhi Vs. UOI**.

4. In support of his contention that ACRs for period 1999-2003 were initiated in one go, the applicant has relied upon OM dated 25.7.2003 requesting to indicate the details under which the self appraisal for the year 1999-2000, 2000-2001, 2001-2002 and 2002-2003 were submitted to the Reporting Officer (copy of this OM has been placed as Annexure -4 colly).

5. It is the averment of the applicant that according to directions he filled up the self-appraisal by the stipulated date and submitted then to the respondents, for further action. The non-availability of ACRs was entirely the result of the incompetence of the respondents. They have endeavoured to cover their lapse by initiating ACRs in one go with the result they were not written objectively and he was not called for interview.

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6. The respondents have vehemently contested the claim of the applicant stating that it is incorrect that the ACRs have been written in one go. Applicant had worked under number of officer and it had taken time to collect the ACRs from these officers.

7. He was not called for the interview, as he had not achieved the required minimum qualifying marks in the ACRs.

8. The contention of the applicant that there had been deliberate delay in holding the interview to favour a set of individuals is incorrect because FCS is for promotions on individual basis and seniority is not involved. The induction of Dr. (Mrs.) C Sujata and P K Dutta are not relevant for purposes of grant of higher grade under FCS.

9. The respondents pleaded that the holding of the interview for promotion to the grade of Scientist 'C' was delayed for the reason that the decision of the DoPT to allow one time relaxation in the criteria of marks for promotion to higher grades at the time of first opportunity being reduced from 90% to 85% was received on 6.8.99 only. On receipt of the said decision, action for constitution of screening committee was initiated and the committee was constituted on 9.9.99. There was no delay in the matter. Dr. (Mrs) Sujata Chaklanobis and P K Dutta were appointed as Scientist 'C' w.e.f. 15.12.1998 and 6.7.99 respectively and the allegation of the applicant because of delay in processing his promotion case is baseless and denied because promotions under FCS are personal to the scientists and not related to seniority. With regard to the filling up of the ACRs forms in one go, the respondents have made the averment that the applicant did not submit his self-appraisal to the Reporting officer in time. The averment of the applicant that he had written his self-appraisal and submitted to the Reporting Officers is not substantiated by the facts. Annexure A 1 and A-II enclosed by the applicant shows that he had written his self-appraisal and marked it to the Reporting Officer. His Reporting Officer Shri Jagdish Singh, Scientist 'G' i.e. Respondent 3 has denied receiving any ACRs containing self-appraisal of the applicant. These remarks are available at Annexure R-1 and R-2. A new set of blank ACR forms was sent to applicant on

30.10.2003 with the request to complete them and submit them to his RO through Administration Section. However, he submitted them directly to the concerned Reporting Officers under intimation to Administrative section. The respondents denied that the applicant had submitted the ACRs forms for the year 1999-2000 and 2000-2001 after writing his self-appraisal.

10. Further, respondent No. 2 vide its OM dated 15.11.2002 had brought to the notice of Scientists about the pending position of their ACRs. The applicant was informed that ACRs for the year 1999-2000, 2000-2001 and 2001-2002 were in complete. He was therefore requested to intimate the details under which he had submitted his self-appraisal, so that further action could be taken. He failed to respond to the circular and was again reminded on 25.7.2003 (Annexure R-5 and R-6) for filling up his ACR.

11. The Reporting Officer of the applicant for the year 2001-2002 was Shri H L Jussal Scientist 'F' and the Reviewing Officer was Shri Jagdish Singh, Scientist 'G' (R3). The Reviewing Officer i.e. R-3 informed the Administrative section that he received ACR for the year 2001-02 only on 04.11.03 and had reviewed it on 09.11.03. The reporting officer for the year 2002-2003 Shri R R Abhyankar, Scientist 'G' (Respondent No. 4) has denied that he had received any ACR of the applicant containing self-appraisal for the year 2002-2003. Therefore, the averment of the applicant the respondents had not properly written and maintained his ACRs is not correct.

12. The applicant in his rejoinder stated that the Scientists after completing the self-appraisal portion submit their ACRs to the Reporting Officer and no acknowledgement is given. He contended that from the concerned registers maintained by the respondent's department it would become very clear that after filling up the Self Assessment Portion (Part-II), the applicant submitted his ACRs within the stipulated period. The respondents may be directed to produce the concerned registers and entire original record pertaining to the ACR for perusal of the Tribunal. He continued that reliance should not be placed on Annexure R-1 and R-2, as these are manufactured documents. He denied receiving



OM dated 5.11.2002 of respondent No. 2, concerning incomplete forms and character rolls. He only came to know of the same on 28.7.2003 when the respondents in their two OMs dated 25.7.2003 and 7.2003 requested the applicant to indicate the details under which the self appraisal was submitted to the reporting officer. The applicant informed respondent No. 2 that he had submitted the ACRs for 1999 to 2004 within stipulated period.

13. We have heard the counsel for the parties and gone through the documents placed on record. We have also gone through the proceedings of the promotion of Scientists 'C'/'D' under modified FCM, which were made available to us. From the perusal of the proceedings, it is clear that the applicant name was considered and the screening committee after scrutinizing the ACRs for the last four years did not recommend his name because he had not obtained the required marks for being 'screened in.'

14. The question before the Tribunal is whether completing the ACR later was prejudicial to the interest of the applicant. Clearly, ACRs for the year 1999 to 2004 were not available; they had to be completed by asking the applicant to give fresh self-appraisals. According to the applicant, he had filled in self-appraisal (Part-II) and submitted to the reporting officer. However, the reporting officers have denied receiving the self-appraisals. We find no reason to disbelieve the respondents, as facts alleged are not proved. Therefore, we do not intend to go into this matter further.

15. In absence of ACRs, applicant's performance could not have been assessed. The respondents provided an opportunity to the applicant for making up the deficiency. The applicant has alleged mala-fide on the part of his Reviewing Officer (Respondent 3) because he had filed OA 2478/2001 challenging his transfer from RDI Division to PATSER-II division and challenging two other transfer orders. Respondent No. 3, according to the applicant did not adopt fair, objective, dispassionate and constructive comment in estimating or assessing the character, ability, integrity and responsibility

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displayed by the applicant as for the year 1999-2000 and as reviewing officer for the year 2001-2002.

16. The apex court in **Basudev Tiwari V. Sido Kanhu University & Ors. JT 1998**

(6) SC 464 has held the burden of mala fides is heavy on the persons who allege it; the alleging of mala fides are often more easily made than proved and the very seriousness of such allegations demand proof of a high order of credibility. In the case of **M Shankaanarayanan, IAS Vs State of Karnataka & Ors 1993(1) SCC 54** it was held that mere differences of opinion between the officer transferred and the authority transferring is not sufficient for drawing the inference of mala fide. It is also held that it may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. However, such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture.

17. In view of the law laid down by the apex court the applicant has to demonstrate that his allegation of mala fide is not just an insinuation, surmise or conjecture. Moreover, the degree of proof demonstrated in such allegations demands proof of a high order of credibility. The mere challenging of transfer order is not sufficient to show mala-fide on the part of the respondent no.3.

18. From the documents placed on record it is apparent that respondent No. 2 vide OM dated 5.11.2002 had brought to the notice of the applicant that ACR for the year 1999-2000, 2000-2001 and 2001-2002 were not complete. He was asked to intimate the details under which he had submitted his self-appraisal. From annexure-5 and annexure-6, it is apparent that he failed to respond to the circulars and had to be reminded again on 25.7.2003. Moreover, the reporting Officer Shri H L Jussal Scientist 'F' and respondent No.3 intimated to the administration section that ACR of the ACR for the year 2001-02 was received only on 04.11.2003 and reviewed it on 9.11.2003. Shri R R Abhyankar

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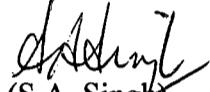
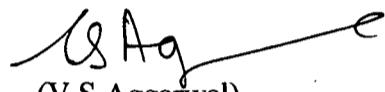
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Scientist 'G' Respondent 4 had denied that he had received any ACR of the applicant containing self-appraisal for the year 2002-2003.

19. From the foregoing it is apparent that non receipt of self appraisal has not only been confirmed by respondent no. 3 but has also been confirmed by the respondent No. 4, so we do not see how the grounds of mala-fide are made out.

20. In absence of the ACRs, the respondents had no alternative but to get them completed to assess the applicant for promotion under Flexible Complementing Scheme. As already indicated earlier we have gone through the proceedings of the promotion of Scientists and have found that name of the applicant had not been recommended because he has not obtained the required marks. We therefore, find no infirmity in the proceedings and OA is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)
(V S Aggarwal)
Chairman

Patwal/